

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SERGEI CHEPILKO,

Case No. 08-CV-4033

Plaintiff,

-against-

CIGNA GROUP INSURANCE,

Defendant.
-----X

**DECLARATION OF MICHELLE M. ARBITRIO IN SUPPORT OF CIGNA
GROUP INSURANCE'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Michelle M. Arbitrio, pursuant to 28 U.S.C. § 1746, declares and states as follows
subject to the penalties for perjury of the United States of America:

1. I am an associate of the firm Wilson, Elser, Moskowitz, Edelman &
Dicker LLP, attorneys for Defendant CIGNA Group Insurance and submit this
declaration in support of its Motion to Dismiss Plaintiff's Complaint for Failure to State a
Cause of Action.

2. Annexed to this declaration are true and correct copies of the following
documents:

<u>Exhibit</u>	<u>Description</u>
A	Plaintiff's Complaint dated April 29, 2008
B	Cornell-Weill Group Long Term Disability Insurance Policy

Dated: White Plains, New York
September 5, 2008

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By: mmarbitrio
Michelle M. Arbitrio (MA 2137)
Attorney for Defendant
CIGNA Group Insurance
3 Gannett Drive
White Plains, New York 10604
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File No.: 09856.00217

EXHIBIT A

JUDGE KOELT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SERGEI CHEPILKO,

Plaintiff,

COMPLAINT

-against-

JURY TRIAL DEMANDED

CIGNA GROUP INSURANCE,

Defendant.

----- X

Plaintiff Sergei Chepilko ("Mr. Chepilko") alleges as follows:

NATURE OF THE ACTION

1. This is an action for the breach of contract brought against Defendant Cigna Group Insurance (the "Cigna").

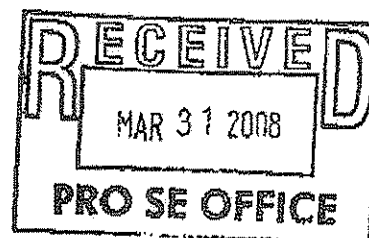
PARTIES

2. Plaintiff Sergei Chepilko was an employee of the Weill Medical College of Cornell University located at 1300 York Avenue, Manhattan, New York, 10021, where a substantial part of the events or omissions giving rise to claim occurred, currently resides in Brooklyn, New York.

3. Defendant CIGNA GROUP INSURANCE is a for-profit corporation with its principal place of business at Routing d212, 12225 Greenville Avenue, Suite 655-LB 179 Dallas, TX 75243-9384. The Cigna offers life, accident, disability insurances.

VENUE AND JURISDICTION

4. This Court has subject matter jurisdiction over this action based on diversity of citizenship, pursuant to 28 U.S.C. § 1332.



FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
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5. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(a).

FACTUAL ALLEGATIONS

6. Mr. Chepilko was a member of a Group Long Term Disability Policy Number NYK-1971 of Weill Medical College of Cornell University provided by CIGNA Life Insurance Company of New York.

7. After he became disable, Mr. Chepilko has submitted claim, dated March 26, 2002, for long term insurance benefits, which included Dr. Ostrovsky statement confirming plaintiff's total disability.

8. The Cigna baselessly denied Mr. Chepilko's disability benefits on June 7, 2002.

9. Plaintiff's appeal to the Cigna was also baselessly and deliberately denied on February 12, 2003.

10. Plaintiff continues his medical treatment and currently on disability.

FIRST CAUSE OF ACTION
[Breach of contract]

11. The allegation set forth in paragraphs 1 through 10 of this Complaint are re-alleged and incorporated by reference as if fully set forth herein.

12. As a member of the Group Long Term Disability Policy, Mr. Chepilko had a valid contract with the Cigna.

13. The Cigna baselessly and deliberately denied Mr. Chepilko's disability benefits.

14. The Cigna's wrongdoing stated above constitutes a breach of contract.

15. Because the Cigna's breach of contract was wanton, willful and baseless, punitive damages should also be awarded against it in an amount to be determined at trial.

JURY DEMAND

16. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands the following relief against Defendant:

- A. Awarding damages resulting from Defendant's wrongdoing in excess of \$750,000.
- B. Punitive damages in an amount to be proven at trial.
- C. Pre- and post-judgment cost and interest.
- D. Such other relief as this Court may deem appropriate.

Dated: March 26, 2008

S. Chepilko

Sergei Chepilko

Address: 501 Surf Avenue, Apt. 13A,
Brooklyn, NY, 11224

Telephone: 718-266- 1288

EXHIBIT B

GROUP
INA LIFE INSURANCE COMPANY OF NEW YORK
195 BROADWAY, NEW YORK, NEW YORK 10007
A STOCK INSURANCE COMPANY
(Non-Participating)

LONG TERM DISABILITY
INCOME POLICY

Group Policy No. NYK-1972

Policy Delivered In: NE

Policy Effective Date: July 1, 1989

Policy Anniversary Date: July 1

Premium Due Dates: July 31 and the last day of each calendar month thereafter.

This is a contract between us, the INA Life Insurance Company of New York, and you,

CORNELL UNIVERSITY MEDICAL COLLEGE

(the Policyholder).

In return for your application, and for the payment of premiums as set forth in this policy, we agree to pay the benefits described in this policy. These benefits are subject to all of the terms of this policy, including any riders, endorsements, and amendments.

This policy goes into effect on the Policy Effective Date, at 12.01 a.m. at your address. The policy will stay in force as long as the premium is paid, until terminated by you or us.

This contract shall be governed by the laws of the state in which it is delivered.

IN WITNESS WHEREOF, we have signed this policy at New York, New York.

LONG TERM DISABILITY INCOME POLICY

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This policy includes the following attached forms on date of issue:

LONG TERM DISABILITY INCOME POLICY

DEFINITIONS

EMPLOYER. The term Employer means the Policyholder and all Affiliated Employers shown in the "Affiliated or Subsidiary Employers" rider.

EMPLOYEE. The term Employee means an employee of the employer.

ACTIVE SERVICE. An Employee will be considered in Active Service with the Employer on a day which is one of the Employer's scheduled work days if he is performing in the usual way all of the regular duties of his work for the Employer on that day, either at one of the Employer's usual places of business or at some location to which the Employer's business requires him to travel. An Employee will be deemed in Active Service on a day which is not one of the Employer's scheduled work days only if he was in Active Service on the preceding scheduled work day.

INJURY. The term injury means an accidental bodily injury.

SICKNESS. The term Sickness means a physical or mental illness. It also includes pregnancy.

RETIREMENT PLAN. The term Retirement Plan means any defined benefit plan or defined contribution plan (including a profit sharing plan) sponsored by the Employer. It does not include: (1) an individual deferred compensation agreement; (2) a profit sharing or any other retirement or savings plan that is maintained in addition to a defined benefit or other defined contribution pension plan; or (3) any employee savings plan including a thrift, stock option or stock bonus plan, individual retirement account, or 401(k) plan or 403(b) tax deferred annuity plan.

LM-6N08

Definitions

(1972)

LONG TERM DISABILITY INCOME POLICY

DEFINITIONS (Continued)

Applicable to Class 1 Only:

BASIC EARNINGS. The term Basic Earnings means the Employee's rate of pay from the Employer in effect just prior to the date the Employee's Disability begins. It does not include overtime, bonus, additional compensation or pay for more than 35 hours a week.

Basic Earnings are determined initially on the date the Employee becomes insured. A change in the amount of Basic Earnings will be considered effective on the date of the change. If the Employee is not in Active Service on that day, no increase in Basic Earnings will be considered effective until he returns to Active Service for one full day. In no event will an increase in an Employee's Basic Earnings be considered effective if it occurs:

- (1) between separate periods of Disability which are considered one period under the Successive Periods of Disability provision; or
- (2) during a Benefit Waiting Period.

INDEXED BASIC EARNINGS. An Employee's Indexed Basic Earnings is an amount determined as follows:

For the first year the Employee is disabled, his Indexed Basic Earnings will be equal to his Basic Earnings.

After the Employee has been disabled for 1 year, his Basic Earnings will be increased on each annual anniversary of the date he became disabled. The amount of each increase will equal A or B, whichever is less where:

- A = 10% of the Employee's Indexed Basic Earnings during the preceding year of Disability.
- B = The rate of increase in the Consumer Price Index (CPI-W) during the preceding calendar year.

The Employee's Basic Earnings will not be decreased by a drop in the Consumer Price Index (CPI-W).

CPI-W means the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the US Department of Labor. If the index is discontinued or changed, another nationally published index that is comparable to the CPI-W will be used.

LONG TERM DISABILITY INCOME POLICY

DEFINITIONS (Continued)

Applicable to Class 2 Only:

BASIC EARNINGS. The term Basic Earnings means the Employee's rate of pay from the Employer in effect just prior to the date Disability begins including Supplemental Compensation from the Faculty Practice Plan. Supplemental Compensation from the Faculty Practice Plan shall be that which was earned in the calendar year preceding disability.

Basic Earnings are determined initially on the date the Employee becomes insured. A change in the amount of Basic Earnings will be considered effective on the date of the change. If the Employee is not in Active Service on that day, no increase in Basic Earnings will be considered effective until he returns to Active Service for one full day. In no event will an increase in an Employee's Basic Earnings be considered effective if it occurs:

- (1) between separate periods of Disability which are considered one period under the Successive Periods of Disability provision; or
- (2) during a Benefit Waiting Period.

INDEXED BASIC EARNINGS. An Employee's Indexed Basic Earnings is an amount determined as follows:

For the first year the Employee is disabled, his Indexed Basic Earnings will be equal to his Basic Earnings.

After the Employee has been disabled for 1 year, his Basic Earnings will be increased on each annual anniversary of the date he became disabled. The amount of each increase will equal A or B, whichever is less where:

- A = 10% of the Employee's Indexed Basic Earnings during the preceding year of Disability.
- B = The rate of increase in the Consumer Price Index (CPI-W) during the preceding calendar year.

The Employee's Basic Earnings will not be decreased by a drop in the Consumer Price Index (CPI-W).

CPI-W means the Consumer Price Index for Urban Wage-Earners and Clerical Workers published by the US Department of Labor. If the index is discontinued or changed, another nationally published index that is comparable to the CPI-W will be used.

LONG TERM DISABILITY INCOME POLICY

DEFINITIONS (Continued)

Applicable to Class 1 & 2 Only:

DISABILITY. An Employee will be considered Disabled if because of Injury or Sickness:

1. he is unable to perform all the material duties of his regular occupation; or
2. he is earning less than 80% of his Indexed Basic Earnings.

LM-6N09

Definitions (Continued)

LONG TERM DISABILITY INCOME POLICY**ELIGIBILITY FOR EMPLOYEE INSURANCE**

Each Employee in one of the Classes of Eligible Employees shown below will become eligible for Employee Insurance on the day he completes the Waiting Period, if any. An Employee who was previously insured and whose insurance ceased must satisfy the New Employee Group Waiting Period to become insured again. If the insurance on an Employee ceased because he was no longer employed in a Class of Eligible Employees, he is not required to satisfy any Waiting Period if he again becomes a member of a Class of Eligible Employees within one year after his insurance ceased.

INITIAL EMPLOYEE GROUP. The Initial Employee Group is made up of Employees:

- (1) in the employ of an Employer on the Effective Date of the policy; or
- (2) in the employ of an Employer on the date that Employer becomes an Affiliated Employer.

NEW EMPLOYEE GROUP. The New Employee Group is made up of Employees whose employment with an Employer starts after the Effective Date of the policy.

WAITING PERIOD.

Initial Employee Group:
None

New Employee Group:
On the first working day of the month following or coinciding with the date of employment.

CLASSES OF ELIGIBLE EMPLOYEES.

- | | |
|---------|--|
| Class 1 | Regular Non-Academic Employees classified as exempt under the Fair Labor Standards Act and the New York State Wage and Hour Laws and Academic Employees whose earnings are sufficient to be classified as exempt under the above laws except for members of the Faculty Practice Plan. |
| Class 2 | Members of the Faculty Practice Plan whose earnings are sufficient to be classified as exempt under the Fair Labor Standards Act and the New York State Wage and Hour Laws. |

LM-6N10

Eligibility

LONG TERM DISABILITY INCOME POLICY**EFFECTIVE DATE OF EMPLOYEE INSURANCE**

Each Employee may elect to be insured for Employee Insurance only by signing a payroll deduction form approved by the Policyholder and the Insurance Company. The effective date of his insurance depends upon the date on which the Employee elects the insurance.

- (1) If he elects Employee Insurance on or before the date he becomes eligible, his insurance will become effective on the date he becomes eligible.
- (2) If he elects Employee Insurance more than 31 days after he becomes eligible his insurance will become effective on the date the Insurance Company agrees in writing to insure him.
- (3) If his Employee Insurance ceased because he cancelled his payroll deduction, and he again elects to be insured, his insurance will become effective on the date the Insurance Company agrees in writing to insure him.

Under the circumstances described in items 2 and 3, the Insurance Company may require the Employee to submit evidence of good health acceptable to the Insurance Company at his own expense before it agrees to insure him.

If an Employee is not in Active Service on the date his insurance would otherwise become effective, it will become effective on the date he returns to Active Service.

LM-6N11

Effective Date

(1972)

LONG TERM DISABILITY INCOME POLICY

TERMINATION OF INSURANCE

The insurance on an Employee will cease on the earliest date below:

- (1) the date the Employee ceases to be in a Class of Eligible Employees or ceases to qualify as an Employee;
- (2) the last day for which the Employee has made a required premium contribution for the insurance;
- (3) the date the policy is cancelled;
- (4) the last day of the month in which the Employee's Active Service ends, except as set forth below.
 - (a) If the Employee's Active Service ends due to Disability For which Monthly Benefits are or may become payable, the insurance will continue while that Disability continues during the Benefit Waiting Period and thereafter but only for as long as Monthly Benefits are payable for Disability.
 - (b) If the Employee returns to Active Service in a Class of Eligible Employees as soon as Disability ceases, the insurance will be reinstated when the Policyholder pays the premium for him.
- (5) If the Employer insured his employee as a member of a trade association or an insurance trust fund, on the date that the Employer no longer participates.

WAIVER OF PREMIUM

Premium for an Employee will be waived while Monthly Benefits for Disability are payable to him.

EXTENSION OF BENEFITS AFTER CANCELLATION

Payment of Monthly Benefits will not be affected by cancellation of this policy as long as the Disability begins while this policy is in force.

LONG TERM DISABILITY INCOME POLICY

CONVERSION PRIVILEGE

HOW AND WHEN TO CONVERT. When an Employee's Long Term Disability Insurance under this policy ceases, he may be eligible to be insured under a group policy providing converted long term disability benefits (called **Converted Insurance**) only if he: (1) is Entitled to Convert; and (2) applies in writing and pays the first premium for **Converted Insurance** to the Insurance Company within either of the following periods of time after the date his insurance under this policy ceases:

- (a) within 31 days, without evidence of good health; or
- (b) after 31 days but not more than 62 days, with evidence of good health.

ENTITLED TO CONVERT. An Employee is Entitled to Convert Long Term Disability Insurance only if:

- (1) he has been insured for at least 12 consecutive months under this policy or under this and a prior Long Term Disability group policy issued to the Policyholder; and
- (2) his insurance under this policy ceased because he was no longer in Active Service because of resignation, involuntary termination, layoff or an uninsured leave of absence.

NOT ENTITLED TO CONVERT. An Employee is not Entitled to Convert if:

- (1) he is no longer in a Class of Eligible Employees;
- (2) he has attained age 70;
- (3) he has retired;
- (4) he is not in Active Service because of disability; or
- (5) this policy is cancelled for any reason.

CONVERTED INSURANCE. Converted Insurance will be provided under the plan of benefits offered by the Insurance Company at the time the first premium is received.

A certificate under the group converted policy will be issued to the Employee describing his benefits. Converted Insurance will take effect on: (a) the day after the Employee's insurance under this policy ceases; or (b) in the case that an Employee is required to submit evidence of good health, the day the Insurance Company accepts the evidence. The premium on the day it takes effect will be based on: (a) class of risk; (b) age; and (c) benefits.

The Insurance Company or the Policyholder will give the Employee further details of the available **Converted Insurance**.

LM-27271

Conversion Privilege

LONG TERM DISABILITY INCOME POLICY

SCHEDULE

Applicable to Class I only

BENEFIT WAITING PERIOD. The Benefit Waiting Period for an employee will be 180 days of continuous Disability. A period of Disability will be considered continuous even if the Disabled Employee returns to work. If, however, at the end of the Benefit Waiting Period, the Employee has earned more than 80% of his Basic Monthly Earnings for any month during the Benefit Waiting Period, it will be extended for 1 month. If, the Employee earns more than 80% of his Basic Monthly Earnings for more than one month during the Benefit Waiting Period, his period of Disability will not be considered continuous.

MONTHLY BENEFIT. The Monthly Benefit for any month is the lesser of (1) or (2):

- (1) 60% of the Employee's Monthly Basic Earnings at the time he becomes Disabled, rounded to the nearer dollar up to a maximum of \$15,000, and reduced by the amount of all Other Benefits, for that month, excluding any Other Benefits received by or on behalf of the Employee's dependents.
- (2) 70% of the Employee's Basic Earnings at the time he becomes Disabled, reduced by the amount of all Other Benefits which the Employee and his dependents receive for that month.

However, if the Employee returns to work and is earning less than 80% of his Indexed Basic Earnings in his regular occupation his Monthly Benefit is:

1. the Monthly Benefit as figured above for the first 12 months benefits are payable; and
2. the Monthly Benefit as figured above minus 50% of the Employee's monthly earnings received while he is Disabled, after the first 12 months benefits are payable.

If, during any month, the Employee returns to work, the sum of his Monthly Benefit as figured above, his earnings and any other Benefits, exceed:

1. 100% of his Indexed Basic Monthly Earnings for the first 12 months benefits are payable; or
2. 80% of his Indexed Basic Monthly Earnings after the first 12 months are payable;

his Monthly Benefit for that month will be further reduced by such excess amount.

The Monthly Benefits will not be less than \$100, or 10% of the Policy benefit before reductions due to "Other Benefits" whichever is greater, regardless of any reductions shown in this schedule. Monthly Benefits will be pro-rated if payable for any period less than a month.

LM-6N13

Waiting Period; Monthly Benefit

(1972)

LONG TERM DISABILITY INCOME POLICY

SCHEDULE

Applicable to Class 2 only

BENEFIT WAITING PERIOD. The Benefit Waiting Period for an Employee will be 180 days of continuous Disability. A period of Disability will be considered continuous even if the Disabled Employee returns to work on a full-time basis. If, however, at the end of the Benefit Waiting Period, the Employee has earned more than 80% of his Basic Monthly Earnings for any month during the Benefit Waiting Period, it will be extended for 1 month. If, the Employee earns more than 80% of his Basic Monthly Earnings for more than one month during the Benefit Waiting Period, his period of Disability will not be considered continuous.

MONTHLY BENEFIT. The Monthly Benefit for any month is the lesser of (1) or (2):

- (1) 60% of the Employee's Monthly Basic Earnings at the time he becomes Disabled, rounded to the nearer dollar up to a maximum of \$25,000, and reduced by the amount of all Other Benefits, for that month, excluding any Other Benefits received by or on behalf of the Employee's dependents.
- (2) 70% of the Employee's Basic Earnings at the time he becomes Disabled, reduced by the amount of all Other Benefits which the Employee and his dependents receive for that month.

However, if the Employee returns to work and is earning less than 80% of his Indexed Basic Earnings in his regular occupation or any other occupation his Monthly Benefit is:

1. the Monthly Benefit as figured above for the first 12 months benefits are payable; and
2. the Monthly Benefit as figured above minus 50% of the Employee's monthly earnings received while he is Disabled, after the first 12 months benefits are payable.

If, during any month the Employee returns to work, the sum of his Monthly Benefit as figured above, his earnings and any other Benefits, exceed:

1. 100% of his Indexed Basic Monthly Earnings for the first 12 months benefits are payable; or
2. 80% of his Indexed Basic Monthly Earnings after the first 12 months are payable;

his Monthly Benefit for that month will be further reduced by such excess amount.

The Monthly Benefit will not be less than \$100, or 10% of the Monthly Benefit before reductions due to "Other Benefits" whichever is greater, regardless of any reductions shown in this Schedule. Monthly Benefits will be pro-rated if payable for any period less than a month.

LM-6N13 Waiting Period; Monthly Benefit

LONG TERM DISABILITY INCOME POLICY

SCHEDULE (Continued)

OTHER BENEFITS. Other Benefits include:

- (1) any amounts which the Employee receives on account of his disability under:
 - (a) any group or franchise insurance or similar plan for persons in a group;
 - (b) the Canada and Quebec Pension Plans;
 - (c) any local, state, provincial or federal government disability or retirement plan or law;
 - (d) any salary or wage continuance plan of the Employer;
 - (e) the Jones Act or any workers' compensation, occupational disease or similar law including all permanent as well as temporary disability benefits;
 - (f) any work loss provision in the mandatory part of any "No-Fault" auto insurance policy;
- (2) any disability or Old Age benefits payable under the Federal Social Security Act, which the Employee receives (or is assumed to receive*) on his own behalf;
- (3) any retirement benefits which an Employee receives under: (a) a Retirement Plan sponsored by the Employer; (b) the Canada and Quebec Pension Plans; (c) the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

*See the Assumed Receipt of Benefits provision.

OTHER INSURANCE. If there is other Group Disability insurance which:

- a) applies to the same claim for Disability; and
- b) contains the same or similar provision for reduction because of Other Benefits;

the policy shall be liable for its pro rata share of the total claim.

"Pro rata share" means the proportion of the total benefit that the amount payable under one policy, in the absence of such other insurance, bears to the total applicable benefits under all such policies.

LM-6N14

Other Benefits

LONG TERM DISABILITY INCOME POLICY

SCHEDULE (Continued)

ASSUMED RECEIPT OF BENEFITS.

If an Employee is covered under the Federal Social Security Act, for any disability or Old Age benefit, Statutory Disability (if applicable), Worker's Compensation, or similar laws, he will be assumed to be receiving such benefits for himself (and for his dependents, if applicable). These assumed benefits will be the amount the Insurance Company estimates he (and his dependents, if applicable) is eligible to receive. This assumption will not be made if the Employee gives the Insurance Company proof that:

- (1) he has applied for these benefits; and
- (2) payments were denied.

However, if payments for disability were denied solely because the disability was not expected to last at least 12 consecutive months, the Employee will be assumed to be receiving such benefits after his disability has continued for 12 consecutive months. This assumption will not be made if he gives the Insurance Company proof that:

- (1) he has re-applied for benefits; and
- (2) payments were again denied.

The Insurance Company will not assume receipt of, nor reduce the Monthly Benefit by, any elective, actuarially reduced, early retirement benefits under such laws until the Employee actually receives such benefits.

INCREASES IN OTHER BENEFITS

The Insurance Company will not consider any cost of living increase in any Other Benefits which is effective after:

- (1) the first payment of such Other Benefit becomes due; and
- (2) Monthly Benefits become payable under the policy.

RECOVERY OF OVERPAYMENTS

If the Monthly Benefit for any month is overpaid, the Insurance Company has the right to recover the amount overpaid by either of the following methods:

- (1) a deduction of the overpaid amount from any future payments by the Insurance Company; or
- (2) a lump sum repayment by the Employee of the overpaid amount.

LM-6N16 Assumed Receipt of Benefits; Increase; Overpayments

LONG TERM DISABILITY INCOME POLICY**SCHEDULE (Continued)****LUMP SUM PAYMENTS.**

Any Other Benefits paid in a lump sum (except as shown below) will be deemed to be paid in monthly amounts prorated over the time for which the sum was paid. If no such time is stated, the lump sum will be prorated monthly over the expected life span of the Employee. The Insurance Company will determine that expected life span.

Lump Sum Payments under:

- (1) a Retirement Plan will be deemed to be paid in the monthly amount which:
 - (a) is provided by the standard annuity option under the Plan, as identified by the Policyholder; or
 - (b) is prorated under a standard annuity table over the expected life span of the Employee (if the Plan does not have a standard annuity option);
- (2) the Jones Act or any workers' compensation, occupational disease or similar law (which includes benefits paid under a Compromise and Release) will be deemed to be paid monthly;
 - (a) at the rate stated in the award;
 - (b) at the rate paid prior to the lump sum (if no rate is stated in the award); or
 - (c) at the maximum rate set by the law (if no rate is stated and the Employee did not receive a periodic award).

LM-6N17

Lump Sum Payments

LONG TERM DISABILITY INCOME POLICY

SCHEDULE (Continued)

COST OF LIVING ADJUSTMENT.

On January 1, any Employee who is entitled to receive a Monthly Benefit and has been disabled for 12 months following the end of the Benefit Waiting Period will be eligible for a Cost of Living Adjustment. The Monthly Benefit payable to him, beginning with the month of January, will be increased by 3%.

The Cost of Living Adjustment will be determined on each January 1 until a total of 5 annual adjustments have been made. This adjustment will not be subject to the overall maximum Monthly Benefit.

LM-6N18

Cost of Living Adjustment

(1972)

LONG TERM DISABILITY INCOME POLICY**INSURING PROVISIONS****LONG TERM DISABILITY BENEFITS****COMMENCEMENT OF BENEFITS.**

The Insurance Company will begin paying Monthly Benefits in amounts determined from the Schedule when it receives due proof that:

- (1) the Employee became Disabled while insured for this Long Term Disability Insurance; and
- (2) his Disability has continued for a period longer than the Benefit Waiting Period shown in the Schedule.

DURATION OF BENEFITS.

The Insurance Company will stop paying Monthly Benefits on the earlier of the following dates:

- (1) the date the Employee ceases to be Disabled;
- (2) whichever of the following dates is applicable to the Employee:

<u>Age When Disability Began</u>	<u>Date Monthly Benefits Cease</u>
Age 62 or under	The later of: (a) the Employee's 65th birthday; or (b) the date the 42nd Monthly Benefit is payable;
Age 63	The date the 36th Monthly Benefit is payable;
Age 64	The date the 30th Monthly Benefit is payable;
Age 65	The date the 24th Monthly Benefit is payable;
Age 66	The date the 21st Monthly Benefit is payable;
Age 67	The date the 18th Monthly Benefit is payable;
Age 68	The date the 15th Monthly Benefit is payable;
Age 69 or over	The date the 12th Monthly Benefit is payable.

LONG TERM DISABILITY INCOME POLICY

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

MENTAL ILLNESS, ALCOHOLISM AND DRUG ABUSE LIMITATION.

The Insurance Company will pay Monthly Benefits for no more than 24 months during an Employee's lifetime for Disability caused or contributed to by mental illness, alcoholism or drug abuse while the Employee is not confined in a hospital. An Employee will be considered confined in a hospital only if he is confined continuously for at least 14 days in a hospital licensed to provide care and treatment for the condition causing the Disability.

LM-6N21 Mental Illness, Alcoholism and Drug Abuse

LONG TERM DISABILITY INCOME POLICY

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

PRE-EXISTING CONDITION LIMITATION.

The Insurance Company will not pay Monthly Benefits for any period of Disability which results, directly or indirectly, from an Injury or Sickness for which the Employee, during the 30 days prior to the most recent effective date of his insurance: (1) incurred expenses; (2) received medical treatment; (3) took prescribed drugs or medicines; or (4) consulted a physician. This limitation will not apply to a period of Disability which begins more than 5 days after the most recent effective date of the Employee's insurance.

CONTINUITY OF COVERAGE AND PRE-EXISTING CONDITION LIMITATION.

The Pre-existing Condition Limitation will be waived, as described below, for an Employee who was insured on the day before the Effective Date of this policy under a group long term disability policy: (a) sponsored by the Employer; and (b) replaced by this policy; provided such Employee:

- (1) is in Active Service on the Effective Date of this Policy; and
- (2) has fulfilled the requirements of any Pre-existing Condition Limitation of the replaced policy.

However, if such Employee:

- (1) is in Active Service on the Effective Date of this policy; and
- (2) has not fulfilled the requirements of any Pre-existing Condition Limitation of the replaced policy because the time period required prior to start of Disability has not been satisfied;

any portion of time which may have been satisfied under such Pre-existing Condition Limitation will be applied toward the satisfaction of that time period requirement of the Pre-existing Condition Limitation of this policy.

If Monthly Benefits are determined to be payable, they will be paid according to the provisions of this policy.

LM-6N22

Pre-Existing Condition Limitation

(1972)

LONG TERM DISABILITY INCOME POLICY

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

SUCCESSIVE PERIODS OF DISABILITY.

Separate periods of Disability resulting from the same or related causes will be considered one period of Disability unless separated by the Employee no longer being qualified to receive Monthly Benefits for at least 6 consecutive months.

Separate periods of Disability resulting from unrelated causes will be considered one period of Disability unless separated by a period of at least one full day, during which the Employee is no longer qualified to receive Monthly Benefits.

These provisions do not apply:

- (1) to the Benefit Waiting Period; or
- (2) when the Employee becomes eligible for benefits under any group long term disability policy.

LM-6N23

Successive Period of Disability

LONG TERM DISABILITY INCOME POLICY

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

FAMILY SURVIVOR BENEFITS.

The Insurance Company will pay Family Benefits as set forth below for up to 3 months if:

- (1) the Employee becomes Totally Disabled while insured for Family Benefits;
- (2) the Total Disability has continued for at least 6 months beyond the Benefit Waiting Period; and
- (3) the Employee dies while Monthly Benefits are being paid for that Total Disability and the Insurance Company receives due proof of death.

PAYMENT OF FAMILY BENEFITS.

Family Benefits will be payable Monthly beginning one month after the Employee's death. Family Benefits will be paid to the Employee's lawful spouse if living. If the lawful spouse is not living when any Family Benefit is due, it will be paid in equal shares to each child of the Employee. No Family Benefits will be paid if there is no lawful spouse or child.

The term child means the Employee's unmarried child (including a stepchild living with the Employee at the time of death) who is less than 21 years old. Family Benefits may not be assigned. Payment to anyone as provided above will release the Insurance Company from all liability for Family Benefits to the extent of the payments made.

AMOUNT OF FAMILY BENEFITS.

The amount payable for Family Benefits will be equal to 100% of the sum of:

- (1) the Monthly Benefit due for the last full month of Total Disability before the Employee's death; and
- (2) any amount by which such Monthly Benefit was reduced because of wage or profit received for work performed.

LM-6N24

Family Survivor Benefits

LONG TERM DISABILITY INCOME POLICY

INSURING PROVISIONS

LONG TERM DISABILITY BENEFITS (Continued)

EXCLUSIONS.

No Monthly Benefits will be paid if the Employee's Disability results, directly or indirectly, from:

- (1) injuries intentionally self-inflicted while sane or insane; or
- (2) any act or hazard of a declared or undeclared war.

No Monthly Benefits will be paid for a period of Disability when the Employee is not under the care of a licensed physician.

LM-6N27

Exclusions

LONG TERM DISABILITY INCOME POLICY**PREMIUMS**

PREMIUM PAYMENT. The first premium will be due on the Effective Date. After that, premium will be due monthly unless the Policyholder and the Insurance Company agree on some other method of premium payment. The Policyholder and the Insurance Company may agree to change the method of premium payment from time to time. Premiums are payable at the Home Office of the Insurance Company or to an authorized agent of the Insurance Company.

PREMIUM DUE DATE. After the Effective Date, the Premium Due Date will be the day of the month with the same number as the Anniversary Date or the last day of a month in which there is no day with the same number as the Anniversary Date. If the Policyholder and the Insurance Company agree that premiums will be paid on a quarterly, semi-annual or annual basis, the Premium Due Date will be at the appropriate regular interval, quarterly, semi-annually or annually.

MONTHLY STATEMENT DATE. If premiums are to be paid monthly, the Monthly Statement Date will be the same as the Premium Due Date. If premiums are to be paid on a quarterly, semi-annual or annual basis, the Monthly Statement Date will be the day in each month with the same number as the Premium Due Date.

MONTHLY PREMIUM STATEMENT. If premiums are due monthly, a Monthly Premium Statement will be prepared as of the Premium Due Date. This Monthly Premium Statement will show the premium due. If premiums are due quarterly, semi-annually or annually, a Monthly Premium Statement will be prepared as of the Monthly Statement Date for the time from the Monthly Statement Date to the next Premium Due Date. This Monthly Statement will reflect any pro rata premium charges and credits due to changes in the number of insured persons and changes in insurance amounts that took place in the preceding month.

SIMPLIFIED ACCOUNTING. To simplify the accounting process, premium adjustments will be made on the Monthly Statement Date that is the same as or next follows the date that (1), (2) or (3) below takes place.

- (1) A person becomes insured.
- (2) The amount of insurance on a person changes, but not due to revision of the Schedule.
- (3) A person ceases to be insured.

LM-6N28

Premiums

LONG TERM DISABILITY INCOME POLICY

PREMIUMS (Continued)

Applicable to Class 1 Only:

MONTHLY PREMIUM RATE. The premium will be determined at the rate of \$.37 per month for each \$100 of Covered Payroll.

Covered Payroll for an Employee will mean his monthly rate of Basic Earnings for the insurance month prior to the date such determination is made. However, an Employee's Covered Payroll will not include any part of his monthly Basic Earnings which exceed \$25,000.

CALCULATION OF PREMIUMS. The premium will be calculated by multiplying the total amount of Covered Payroll on the Premium Due Date by the Monthly Premium Rate applicable on that date. If the Policyholder and the Insurance Company agree to a change in the method of premium payment or to a change in the Anniversary Date, an appropriate pro rata adjustment will be made in the premium due.

CHANGES IN PREMIUM RATES. The premium rates may be changed by the Insurance Company from time to time with at least 31 days advance written notice. No change in rates will be made until 12 months after the Effective Date. An increase in rates will not be made more often than once in a 12 month period. However, the Insurance Company reserves the right to change the rates at any time if: 1) the terms of the policy change; 2) a division, subsidiary, affiliated company or eligible class is added or deleted from the policy; 3) there is a change in the factors bearing on the risk assumed; or 4) any federal or state law or regulation is amended to the extent that the Company's benefit obligation is affected. If an increase in rates takes place on a date that is not a Premium Due Date, a pro rata premium will be due on the date of the increase. The pro rata premium will apply for the increase from the date of the increase to the next Premium Due Date. If a decrease in rates takes place on a date that is not a Premium Due Date credit will be granted. The pro rata credit will apply for the decrease from the date of the decrease to the next Premium Due Date.

LM-6N29

Premiums (Continued)

LONG TERM DISABILITY INCOME POLICY

PREMIUMS (Continued)

Applicable to Class 2 Only:

MONTHLY PREMIUM RATE. The premium will be determined at the rate of \$.49 per month for each \$100 of Covered Payroll.

Covered Payroll for an Employee will mean his monthly rate of Basic Earnings for the insurance month prior to the date such determination is made. However, an Employee's Covered Payroll will not include any part of his monthly Basic Earnings which exceed \$41,667.

CALCULATION OF PREMIUMS. The premium will be calculated by multiplying the total amount of Covered Payroll on the Premium Due Date by the Monthly Premium Rate applicable on that date. If the Policyholder and the Insurance Company agree to a change in the method of premium payment or to a change in the Anniversary Date, an appropriate pro rata adjustment will be made in the premium due.

CHANGES IN PREMIUM RATES. The premium rates may be changed by the Insurance Company from time to time with at least 31 days advance written notice. No change in rates will be made until 12 months after the Effective Date. An increase in rates will not be made more often than once in a 12 month period. However, the Insurance Company reserves the right to change the rates at any time if: 1) the terms of the policy change; 2) a division, subsidiary, affiliated company or eligible class is added or deleted from the policy; 3) there is a change in the factors bearing on the risk assumed; or 4) any federal or state law or regulation is amended to the extent that the Company's benefit obligation is affected. If an increase in rates takes place on a date that is not a Premium Due Date, a pro rata premium will be due on the date of the increase. The pro rata premium will apply for the increase from the date of the increase to the next Premium Due Date. If a decrease in rates takes place on a date that is not a Premium Due Date credit will be granted. The pro rata credit will apply for the decrease from the date of the decrease to the next Premium Due Date.

LM-6N29

Premiums (Continued)

LONG TERM DISABILITY INCOME POLICY

CANCELLATION OF POLICY

NOTICE OF CANCELLATION.

The Policyholder or the Insurance Company may cancel the policy as of any Premium Due Date by giving written notice at least 31 days in advance of that date.

If a premium is not paid when due, the policy will automatically be cancelled as of the Premium Due Date, except as set forth below.

The Insurance Company may cancel the policy as of any premium due date if the number of insured Employees is less than 10 or less than 75% of those eligible.

GRACE PERIOD.

If, before a Premium Due Date, the Policyholder has not given written notice to the Insurance Company that the policy is to be cancelled, a Grace Period of 31 days will be granted for the payment of each premium after the initial premium. The policy will stay in effect during that time. If any premium is not paid by the end of the Grace Period, the policy will automatically be cancelled at the end of the Grace Period; except that, if the Policyholder has given written notice in advance of an earlier date of cancellation, the policy will be cancelled as of the earlier date. The Policyholder will be liable to the Insurance Company for any unpaid premium for the time the policy was in force.

LM-6N30

Cancellation of Policy

LONG TERM DISABILITY INCOME POLICY

PAYMENT OF BENEFITS

TO WHOM PAYABLE. Any benefits that are payable for Disability will be paid to the Employee. Family Benefits will be paid to the eligible survivor(s) according to the terms of that section.

If any person to whom benefits are payable is a minor or, in the opinion of the Insurance Company, is not able to give a valid receipt for any payment due him, such payment will be made to his legal guardian. However, if no request for payment has been made by his legal guardian, the Insurance Company, may at its option, make payment to the person or institution appearing to have assumed his custody and support.

If an Employee dies while any of his Disability benefits remain unpaid, the Insurance Company may, at its option, make direct payment to any of the following living relatives of the Employee: spouse, mother, father, children, brothers or sisters; or to the executors or administrators of the Employee's estate.

Payment in the manner described above will release the Insurance Company from all liability to the extent of any payment made.

TIME OF PAYMENT. Any Disability benefits will be paid at regular intervals of not more than one month. Any balance which remains unpaid at the end of any period for which the Insurance Company is liable will be paid at that time.

LM-6N31

Payment of Benefits

LONG TERM DISABILITY INCOME POLICY

PROVISIONS

ENTIRE CONTRACT. The entire contract will be made up of the policy, the application of the Policyholder, a copy of which is attached to the policy, and the applications, if any, of the Employees.

POLICY CHANGES. Changes may be made in the policy only by amendment signed by the Policyholder and by the Insurance Company acting through its President, Vice President, Assistant Vice President, Director or Assistant Director. No agent may change or waive any terms of the policy.

STATEMENTS NOT WARRANTIES. All statements made by the Policyholder or by an insured Employee will be deemed representations and not warranties. No statement made by the Policyholder or by the Employee to obtain insurance will be used to void or reduce the insurance unless it is made in writing and is signed by the Policyholder or the Employee and a copy is sent to the Policyholder, the Employee or his Beneficiary.

NOTICE OF CLAIM. Written notice of claim must be given to the Insurance Company within 30 days after the occurrence or start of the loss on which a claim is based. If notice is not given in that time, the claim will not be invalidated or reduced if it is shown that written notice was given as soon as was reasonably possible.

CLAIM FORMS. When the Insurance Company receives the notice of claim, it will give to the claimant, or to the Policyholder for the claimant, the claim forms it uses for filing proof of loss. If the claimant does not get these claim forms within 15 days after the Insurance Company receives notice of claim, he will be considered to have met the proof of loss requirements if he submits written proof of loss within 90 days after the date of loss. This proof must describe the occurrence, character and extent of the loss for which a claim is made.

PROOF OF LOSS. Written proof of loss must be given to the Insurance Company within 90 days after the date of the loss for which a claim is made. If written proof of loss is not given in that time, the claim will not be invalidated nor reduced if it is shown that written proof of loss was given as soon as was reasonably possible. Upon request, written proof of continued Disability and of regular attendance of a physician must be given to the Insurance Company within 30 days of such request.

PHYSICAL EXAMINATION. The Insurance Company, at its own expense, will have the right to examine any person for whom a claim is pending as often as it may reasonably require.

LEGAL ACTIONS. No action at law or in equity will be brought to recover on the policy until at least 60 days after proof of loss has been filed with the Insurance Company. No action will be brought at all unless brought within 3 years (Kansas: 5 years; South Carolina: 6 years), after the time within which proof of loss is required by the policy.

TIME LIMITATIONS. If any time limit set forth in the policy for giving notice of claim or proof of loss, or for bringing any action at law or in equity is less than that permitted by the law of the state in which the Employee lives when the policy is issued, then the time limit provided in the policy is extended to agree with the minimum permitted by the law of that state.

LM-6N32

Provisions

LONG TERM DISABILITY INCOME POLICY

PROVISIONS (Continued)

PHYSICIAN/PATIENT RELATIONSHIP. The Employee will have the right to choose any physician who is practicing legally. The Insurance Company will in no way disturb the physician/patient relationship.

CERTIFICATES. The Insurance Company will issue to the Policyholder for delivery to each insured Employee an individual certificate. The Policyholder will be responsible for distributing the certificates to its Employees. The certificate will show the benefits provided under the policy. It will set forth any changes in benefits due to age and to whom benefits will be paid. Nothing in the certificate will change or void the terms of the policy.

LM-6N32

Provisions

LONG TERM DISABILITY INCOME POLICY

MISCELLANEOUS PROVISIONS

INSURANCE DATA. The Policyholder will give the Insurance Company all of the data that it needs to calculate the premium and all other data that it may reasonably require. Failure of the Policyholder to give this data will not void or continue an Employee's insurance. The Insurance Company has the right to examine the Policyholder's records relative to these benefits at any reasonable time while the policy is in effect. It also has this right until all rights and obligations under the policy are finally determined.

MALE PRONOUN. The male pronoun as used herein will be deemed to include the female.

INCORRECT PREMIUM PAYMENT. Premiums paid in error for a person who is not eligible to be insured, or for a person after his insurance has ceased, will be refunded without interest when requested by the Policyholder. This premium will not be refunded, however, for more than a 6 month period nor for any period before the last Anniversary Date.

ADMINISTRATION. The Insurance Company will deal solely with the Policyholder who will be deemed the representative of each Employee. Any action taken by the Policyholder will be binding on the Employees.

NOT IN LIEU OF WORKERS' COMPENSATION. The policy is not in lieu of and does not affect requirements for coverage under workers' compensation laws.

LM-6N33

Provisions

INA LIFE INSURANCE COMPANY OF NEW YORK
NEW YORK, NEW YORK
(Herein called the Company)

APPLICATION is hereby made to the Company for Group Policy No. NYK-1972

by CORNELL UNIVERSITY MEDICAL COLLEGE

whose main office is New York, Ne

Said Group Policy is hereby approved and the terms are hereby accepted.

This Application is executed in duplicate, one counterpart being attached to said Group Policy and the other being returned to the Company.

It is agreed that this Application supersedes any previous application for the said Group Policy.

CORNELL UNIVERSITY MEDICAL COLLEGE
(Full or Corporate Name of Applicant)

Signed at _____ By _____
(Signature and Title)

On _____ Witness _____
(To be signed by Licensed Resident Agent where required by law)

LN-26

This Copy is to Remain Attached to the Policy

INA LIFE INSURANCE COMPANY OF NEW YORK
NEW YORK, NEW YORK
(Herein called the Company)

APPLICATION is hereby made to the Company for Group Policy No. NYK-1972

by CORNELL UNIVERSITY MEDICAL COLLEGE

whose main office is New York, Ne

Said Group Policy is hereby approved and the terms are hereby accepted.

This Application is executed in duplicate, one counterpart being attached to said Group Policy and the other being returned to the Company.

It is agreed that this Application supersedes any previous application for the said Group Policy.

CORNELL UNIVERSITY MEDICAL COLLEGE
(Full or Corporate Name of Applicant)

Signed at _____ By _____
(Signature and Title)

On _____ Witness _____
(To be signed by Licensed Resident Agent where required by law)

LN-26

This Copy is To Be Returned To Us

Date:

To:

Sales Office Boston

GSR Name Bill Melymuka

From:

Policy Issue Technician Anita Mooreland

Subject: Policyholder Name and Policy# CORNELL UNIVERSITY MEDICAL COLLEGE
 NYK-1972

Enclosed for the captioned policy:

(4) copies policy

(1) original data card

(2) copies of typed data card

(2) copies of application

Note: Please obtain authorized signatures on two copies and return appropriate copy to Policy Issue.

(1) specimen certificate

Note: If booklets (5 1/4 x 8 1/2) were requested, a proof will follow in 10 days. If there are no changes, please use this form to order your printed booklets. Booklets will be shipped 21 days from receipt of this order form.

Please review the specimen certificate and notify us of your approval by completing and signing the bottom portion of this memo. If there are no changes, please mail to Policy Issue, Attn: Service Desk, TLP-23, or FAX to (215) 761-5810. We require all requested information, in order to process your order.

Flat certificates (8 1/2 x 11) will be printed and shipped in approximately 14 days from the date we receive your order form. If corrections are requested due to our error, please advise us by memo, or indicate the corrections on the specimen certificate and return it with a copy of this memo. If text changes are required by the broker or policyholder, they must be requested on an amendment form and directed to your Underwriter.

CERTIFICATE ORDER FORM

Approval to print: (circle) YES OR NO

Number of certificates, per Class: (circle)

Class 1 ____ Class 4 ____ YES

Class 2 ____ Class 5 ____ Booklets only

Class 3 ____ Class 6 ____ If none indicated, standard blue cover will be used

Custom Certificate Order Form Sent To
CIGNA Printing and Distribution, S.C.

NO

Cover # ____

Ship to: _____

ATTN: _____

Special

Instructions: _____

Signature: _____

Date: _____

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)SS :
COUNTY OF WESTCHESTER)

UNDINE MASSIAH, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides in Brooklyn, New York.

On the 5th day of September, 2008, deponent served the within

**MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND DECLARATION
OF MICHELLE M. ARBITRIO IN SUPPORT OF CIGNA GROUP
INSURANCE'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

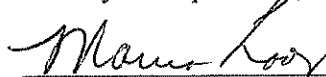
Upon:

Sergei Chepilko *Pro Se*
501 Surf Avenue, Apt. #13A
Brooklyn, New York 11224

a copy of the foregoing which was filed electronically by operation of the Court's electronic filing system and/or by overnight mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.


UNDINE MASSIAH

Sworn to before me this
5th day of September, 2008



Notary Public

MAURA LOOBY
Notary Public, State of New York
No. 01L04921163
Qualified in Putnam County
Commission Expires May31, 2010